Keokuk Packet Co. v. *Davidson* (1888) 95 Mo. 467, or where such effort would be futile, *Murray* v. *Vanderbilt* (N. Y. 1863) 39 Barb. 140; *Hannerty* v. *Standard Theatre Co.* (1891) 109 Mo. 297, he may go ahead, if he act openly and fairly, for his own personal advantage, unembarrassed by his fiduciary position. *Sandy River R. Co.* v. *Stubbs* (1885) 77 Me. 594. His good faith and loyalty to his trust is simply a question of fact, and policy would seem to dictate that the burden of proving this should be on him.

A recent case in Florida, while actually decided on a non-joinder of parties, discussed the duty of directors under interesting circumstances. A director outbid his corporation to obtain a lease of the premises occupied by it. He secured the lease, containing a covenant against assignment or sub-lease, and it was sought to compel him to hold it in trust for the corporation. *Jacksonville Cigar Co.* v. *Dozier* (Fla. 1907) 43 So. 523. The "tenant right of renewal," though not a property right, but a mere expectancy, and subject to be defeated by strangers, *McDonald* v. *Fiss* (N. Y. 1900) 54 App. Div. 489, would seem to be within the purview of the general duty of a director to advance his corporation's interests. *Featherstonbaugh* v. *Fenwick* (1810) 17 Ves. Jr. 299; *Robinson* v. *Jewett* (1889) 116 N. Y. 40. *Prima facie*, therefore, the principal case would seem a proper one for the decree demanded. *Holt* v. *Holt* (1670) 1 Chan. Cas. 190; *Keech* v. *Sandford* (1726) Select Cas. in Chan. *61, 1 White & Tud. L. C. in Eq. 48. The cases on the exact point are not numerous, but, as intimated by the court in the principal case, it would seem that the general rule should not be pushed to the extent of forcing upon an unwilling landlord a tenant whom he has refused to accept; *Crittenden & Cowles Co.* v. *Cowles* (N. Y. 1901) 6 App. Div. 95; 2 COLUMBIA LAW REVIEW 117; and if it can be shown that there was no possibility of renewal to the corporation, there seems nothing objectionable in the director openly and in good faith securing the lease for himself, under the principles stated above, since no injury could result to the corporation therefrom. *Tygart* v. *Wilson* (N. Y. 1899) 39 App. Div. 58; *Murray* v. *Vanderbilt, supra;* cf. *Barr* v. *Pittsburgh Plate-Glass Co.* (1893) 57 Fed. 86.

"INTERSTATE COMMON LAW."—By the constitution of the United States the power of independent settlement of disputes by war or diplomacy, which belonged to the states as sovereign bodies, was resigned. Judicial determinations by the Supreme Court, Art. III, Sec. 2, Par. 1 and 2, or compacts ratified by Congress were substituted, Art. I, Sec. 10, Par. 2, and of course under the latter method final determination would also be with the Supreme Court. The pertinent provisions of these articles are that "the judicial power of the Supreme Court shall extend * * * to controversies between two or more states," and that "in all cases * * * in which a state shall be a party, the Supreme Court shall have original jurisdiction." The Judiciary Act of 1789, Sec. 13, states that the controversies which may here be determined are "of a civil nature." These short sentences have opened up an entirely new branch of law which has grown during more than a century through a famous line of cases, until in a recent case the court said that "through these successive disputes and decisions this court is

practically building up what may not improperly be called 'interstate common law.'" *Kansas* v. *Colorado* (1907) 27 Sup. Ct. Rep. 655.

The first case was *New York* v. *Connecticut* (1799) 4 Dall. 1, where it was decided that New York could not, by an action against Connecticut, enjoin a suit by citizens of Connecticut against citizens of New York, even though the latter action involved an interstate boundary dispute, because New York was not a party of record in the latter action. The next case, *New Jersey* v. *New York* (1831) 5 Pet. 283; (1832) 6 Pet. 623, decided that service upon the governor and attorney general is proper service upon the state, that the filing of a demurrer by the attorney general is an appearance by the state, and that upon failure to appear, the proceedings may be *ex parte*. In *Rhode Island* v. *Massachusetts* (1838) 12 Pet. 657, the question of interstate boundaries was first fully discussed. It was contended by the defendant and held by Chief Justice Taney, that this was a political and not a civil controversy cognizable under the judicial power, but the majority of the court held that, although a question of boundaries between wholly independent nations was political, it had, as between our states been made justicable by their adoption of the Constitution in which the word "controversies" must be held to include such as arise concerning boundaries. Cf. *Hans* v. *Louisiana* (1889) 134 U. S. 1, 15; see also, *Virginia* v. *West Virginia* (1870) 11 Wall. 39; *Missouri* v. *Iowa* (1849) 7 How. 660. In *Rhode Island* v. *Massachusetts, supra;* s. c. (1839) 13 Pet. 23; (1840) 14 Pet. 210; (1841) 15 Pet. 233, it was established that the Chancery rules of procedure should generally apply to interstate suits, but that they would be followed merely as a guide to build up a suitable system. The rules as to time of answering, laches, and acquisition of property by prescription have been much relaxed. In *Florida* v. *Georgia* (1854) 17 How. 478, the court permitted the United States to be made a party to the action for the purpose of introducing evidence and defining its claims in order to do justice to all parties, at the same time openly evading the question as to whether the United States could have been made a party of record, while the minority declared that such an attempt would be unconstitutional. *Alabama* v. *Georgia* (1859) 23 How. 505, *Missouri* v. *Kentucky* (1870) 11 Wall. 395, and *Indiana* v. *Kentucky* (1889) 136 U. S. 479, were cases of boundary disputes, where a river formed the boundary line. It was held that by the rules of international law the sovereignty of states so situated extends to the middle of the stream, except in cases where one state was the original proprietor of the river and ceded the territory on one side thereof to another state, when the first state's sovereignty extends to mean low water mark on the further side. The public law rule that the bed of the river at the time it was chosen as a boundary line and not the continually changing bed continues to be the line, was also followed. Again it has been determined that one state cannot maintain a suit against another state to enjoin as a nuisance an act done by the other state under direction of Congress acting under its constitutional authority to regulate commerce; *South Carolina* v. *Georgia* (1876) 93 U. S. 4; or to enjoin maladministration by state officials under an inoffensive statute; *Louisiana* v. *Texas* (1899) 176 U. S. 1; but that such a suit may be maintained to enjoin a nuisance authorized by, or committed by act of, another state. *Missouri* v. *Illinois* (1900)

180 U. S. 224. *Virginia* v. *West Virginia* (1870) 11 Wall. 39 and *Virginia* v. *Tennessee* (1892) 148 U. S. 503, involved the question of ratification by Congress of agreements between the states. It was laid down that such ratification need not be expressed, but may be implied from the active acquiescence of Congress and will always be implied if possible. In the latter case is a radical dictum to the effect that those agreements only which tend to disturb the political power of the United States government need be ratified. In *New Hampshire* v. *Louisiana* and *New York* v. *Louisiana* (1882) 108 U. S. 76, the plaintiff states were only nominal parties in interest, and it was held that the rule of international law that a sovereign may assume the collection of its citizens' debts could not be utilized so as to make a state a nominal party and thus evade the Eleventh Amendment. Cf. *Louisiana* v. *Texas, supra.* In the most recent case of the series, Kansas claimed that Colorado had no right to interfere with the flow of the Arkansas River, as it had always come down to Kansas, whereas Colorado, relying upon the western doctrine of riparian rights, claimed that by prior appropriation she had acquired the right to use large quantities of the water for irrigation. The court applied neither the common law nor western rules, but on broad principles of justice decided that Colorado was justified in her diversion of the water, because the injury to Kansas was greatly disproportionate to the benefit to Colorado and was not so great as to materially affect the general welfare of the state. *Kansas* v. *Colorado,* supra.

Thus it appears from this study of the interstate cases that rules have been laid down on questions of procedure; jurisdiction; enjoining of suits in state courts; right of the United States to be heard in interstate controversies; respective rights of states when a river forms their dividing line; interstate nuisances; necessity and method of Congressional ratification of interstate agreements; evasion of the Eleventh Amendment by a state as nominal plaintiff; and respective rights of states as upper and lower riparian proprietors. To determine these questions rules of private and public law have been drawn upon as each was most applicable and when neither afforded an appropriate basis for the decision, the court has not hesitated to rely upon "broad principles of justice." That a most interesting branch of law is here developing is evident and it would seem that a better name could not be chosen than "interstate common law," as suggested by Mr. Justice Brewer in the principal case.

"DOING BUSINESS" WITHIN A STATE BY A FOREIGN CORPORATION.—A State may, even arbitrarily, refuse permission to a foreign corporation to transact business within its borders, *Waters Pierce Oil Co.* v. *Texas* (1900) 177 U. S. 28, and hence it may grant its permission upon such conditions as it pleases. *Paul* v. *Virginia* (1868) 8 Wall. 168; *Doyle* v. *Continental Insurance Co.* (1876) 94 U. S. 535; *Hooper* v. *California* (1895) 155 U. S. 648. If the corporation thereafter does business, it is deemed to have assented to such conditions, *St. Clair* v. *Cox* (1882) 106 U. S. 350, and their imposition raises *ipso facto* no question of constitutional law, *Doyle* v. *Continental Ins. Co., supra,* except in special cases, such as those involving interstate commerce. *Paul* v. *Virginia, supra;* 7 COLUMBIA LAW REVIEW 529.